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January 25, 2024

Via ECF

Honorable Sarah Netburn
United States Magistrate Judge

Re: *In re Terrorist Attacks on September 11, 2001*,
MDL No. 03-MDL-1570 (GBD) (SN)
Ashton et al. v. al Qaeda Islamic Army, et al., 02-cv-6977

Your Honor:

I write to request Your Honor's assistance in securing partial default judgments against the Taliban that were requested many months ago by my clients. While Your Honor has issued many such default judgments, my clients have been prejudiced by the delay – they are yet to receive this relief while other plaintiffs, *viz.*, the *Havlish* and *Federal Insurance* plaintiffs (among others), are now able to pursue alleged Taliban assets because they received their partial default judgment awards many months ago.

1. The *Ashton-Burlingame-Dickey* Plaintiffs

On August 17, 2022, the *Ashton-Burlingame-Dickey* plaintiffs filed an Amended Motion for Default Judgment as to the Taliban (regarding the following families: Dickey, Eaton, O'Brien, Seaman, Sliwak, Wallace, and Lynch). *See* ECF Nos. 8386 (notice of motion), 8387 (declaration with exhibits), 8389 (memo of law), 8668 (proposed judgment) and 8668-1 (chart of requested damages).

On March 14, 2023, the Your Honor issued a Report & Recommendation ("R&R") (ECF No. 8925) that failed to explicitly grant the latter motion (the motion of the *Ashton-Burlingame-Dickey* plaintiffs was not among the ECF numbers in italics, reference was made to the relief they requested only in Appendix A):

CONCLUSION

The Court recommends GRANTING partial final default judgment as to the U.S. citizen plaintiffs listed in *ECF Nos 8275-1, 8275-3 (other than the five whose claims will be adjudicated with the motion at ECF No. 8568 in accordance with ECF No. 8660), 8299- 1, 8299-2, 8299- 3, 8337-1, 8337- 3, 8337-4, 8364-1, No. 18- cv-03353 at ECF Nos. 76- 1, 7 6-2, and Appendix A (addressing the Ashton-Burlingame-Dickey plaintiffs)*, subject to the corrections and caveats described there. To that end, it recommends:

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- awarding these plaintiffs damages as provided in ECF Nos. 8275-1, 8275-3, 8299-1, 8299-3, 8337-1, 8337-3, 8337-4, 8364- 1, No. 18-cv-03353 at ECF Nos. 76-1, 76-2, **and Appendix A** . . .

The Court recommends DENYING all other motions with leave to re-file. It further recommends permitting all plaintiffs in these actions to apply for default judgment awards in later stages, to the extent such awards have not already been addressed.

One day later, on March 15, 2023, the Your Honor withdrew the latter decision and issued an Amended R&R (ECF No. 8929) *that failed to attach Appendix A*. Although Your Honor did not attach Appendix A to the Amended R&R, within the R&R, Your Honor again stated that she was “awarding these plaintiffs damages as provided in ECF Nos. 8275-1, 8275-3, 8364-1, 8380-1, 8380-2, 8490-1, 8755-1, 8755-3, No. 18- cv-03353 at ECF Nos. 76-1, 76-2, **and Appendix A [which contained only awards to the Ashton-Burlingame-Dickey Plaintiffs]**. While the MDL ECF numbers for the *Ashton-Burlingame-Dickey* plaintiffs’ motion ECF Nos. 8386, 8387, 8389, 8668 and 8668-1) again were not included within the ECF default judgment motion numbers quoted in the latter sentence, Your Honor, however, reaffirmed her intent to grant the *Ashton-Burlingame-Dickey* plaintiffs relief through reference to the “Appendix A” (not attached).

On March 30, 2023, Judge George Daniels issued a Memorandum Decision and Order (ECF No. 8973) affirming Your Honor’s Amended R&R (emphasis added):

CONCLUSION

This Court GRANTS partial final default judgment as to U.S. citizen Plaintiffs listed in ECF Nos. 8275-1, 8275-3 (other than the five Plaintiffs’ claims that will be adjudicated with the motion at ECF No. 8568, see supra note 9), **8364-1, 8380-1, 8380-2, 8490-1, 8755-1, 8755-3, and Report Appendix A**, subject to the corrections and caveats described therein.¹

ORDERED that U.S. citizen Plaintiffs are awarded damages as provided in ECF Nos. 8275-1,¹³ 8275-3, ¹⁴ 8364-1, 8380-1, 8380-2, 8490-1, 8755-1, 8755-3, and Report Appendix A . . .

. . . The Clerk of Court is directed to close the open motions (including ECF ... 8386 ...) (*re: the Ashton-Burlingame-Dickey Amended Motion*).

In sum, the *Ashton-Burlingame-Dickey* plaintiffs were left with a bit of uncertainty based on the latter two decisions issued by the Court. While Appendix A was, indeed, referenced by Your Honor in the Amended R&R, and while Your Honor and Judge Daniels stated an intention to award the *Ashton-Burlingame-Dickey* plaintiffs the relief requested against the Taliban, the fact that Appendix A was not attached to the Amended R&R left the docket in an awkward state.

¹ Judge Daniels did not address the *Ashton-Burlingame-Dickey* Plaintiffs’ motion (ECF##8386, 8387, 8389, 8668 and 8668-1), other than stating that “Appendix A” was granted. The problem with that ruling is that Appendix A was not attached to the Amended R&R referred to by Judge Daniels.

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Attempting to resolve this confusion (as Judge Daniels instructed the Clerk to “close the open motions”), the *Ashton-Burlingame-Dickey* plaintiffs filed an Amended Motion for Default Judgment as to the Taliban on November 2, 2023. *See* ECF Nos. 9406 and 9408-1.

On November 6, 2023, Your Honor issued an Order in response to the latter motion (ECF #9412):

"It is unclear what motion this filing intended to amend or replace."

On November 7, 2023, the undersigned filed a letter addressing Your Honor’s November 6 Order. I attempted to explain why the November 2 Amended Motion was filed (ECF No. 9415) – while Judge Daniels approved of the award of damages in “Appendix A” (no longer part of Your Honor’s Amended R&R), he “closed” all open motions and did not explicitly state that he was affirming the grant of the *Ashton-Burlingame-Dickey* plaintiffs’ motion when granting other default judgment motions (no reference to ECF Nos. 8386, 8387, 8389, 8668 and 8668-1).

We now seek Your Honor’s assistance in clearing up the confusion in the docket. We ask Your Honor to sign and file the Proposed Partial Final Judgment filed as ECF# 9408 (which mirrors the “Appendix A” that apparently was mistakenly not attached to the Amended R&R (ECF#8929)).

2. The Ashton-Breitweiser/Ryan Plaintiffs

On April 21, 2023, the *Ashton-Breitweiser/Ryan* plaintiffs filed a Motion for Default Judgment as to the Taliban. *See* ECF Nos. 9041 (notice of motion), 9042 (declaration with exhibits), 9045 (proposed judgment).

On October 12, 2023, Your Honor issued an Order (ECF No. 9373) that effectively denied relating the latter motion without prejudice to a refiling:

That leaves the Plaintiffs with two avenues for seeking relief. They may pursue recovery under the ATA notwithstanding the Court's interpretation of its scope. Or they may pursue recovery under another cause of action, such as common law wrongful death.

On October 31, 2023, the *Ashton-Breitweiser/Ryan* plaintiffs filed an Amended Motion for Default Judgment as to the Taliban. *See* ECF Nos. 9395 (notice of motion), 9396 (declaration with exhibits) and ECF 9397 (proposed judgment).

The Court has not yet issued the requested partial default judgment against the Taliban (Amended Motion regarding Breitweiser and Ryan – ECF Nos. 9395, 9396 and 9397).

In sum, we respectfully ask Your Honor to issue the requested partial default judgments against the Taliban described above (ECF Nos. 9408 and 9397 – proposed judgments) as soon as possible.

Sincerely yours,

John F. Schutty